

provided.

(Doc. No. 1-4 at 6).

Thus, reading the Complaint and all the pleadings in a light most favorable to Plaintiff, it appears that Plaintiff is contending that he is being illegally detained by the State of North Carolina, a claim actionable under 28 U.S.C. § 2254. However, before the Court may re-characterize Plaintiff's complaint as a petition for habeas corpus, it must notify Plaintiff of the difficulties he will face if he wishes to later file another habeas petition and give him an opportunity to contest the re-characterization or withdraw his complaint. Castro v. United States, 540 U.S. 375, 382 (2003); Rivenbank v. Virginia, No. 08-1395, 2008 WL 5424074, at *1 n.* (4th Cir. Dec. 30, 2008).

28 U.S.C. § 2244 requires courts to dismiss any "claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application." Further:

A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed unless--

(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(3)(A) Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.


Id. Thus, it will be significantly more difficult for Plaintiff to file another 2254 petition if the

Court construes his complaint as a habeas petition. Plaintiff has fourteen (14) days from the date of this Order to contest re-characterization of his complaint or to inform the Court that he would like to dismiss this suit. Should Plaintiff fail to respond to this Order, the Court will re-characterize his complaint as a 2254 petition and proceed to preliminary review under Rule 4 of the Rules Governing § 2254 Cases. See 28 U.S.C.A. foll. § 2254.

IT IS, THEREFORE, ORDERED that:

1. Plaintiff's First Motion to Review Case, (Doc. No. 14), is **GRANTED**;
2. Plaintiff's Second Motion to Review Case, (Doc. No. 15), is **GRANTED**; and
3. Plaintiff has fourteen (14) days from the date of this Order to contest re-characterization of his complaint as a 2254 petition or to inform the Court that he would like to dismiss this suit.

Signed: February 9, 2012


Robert J. Conrad, Jr.
Chief United States District Judge

